

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7533

Investigation Re: Establishment of a Standard)
Offer Program for Qualifying Sustainably Priced)
Energy Enterprise Development ("SPEED"))
Resources)

Order entered: 3/28/2011

ORDER RE: FARM METHANE PROJECT ELIGIBILITY

Background

Under 30 V.S.A. § 8005(b)(2)(A)(i), electric generation plants eligible for the Sustainably Priced Energy Enterprise Development standard-offer program in the farm-methane category must utilize methane derived from agricultural operations. In an October 28, 2009, Order implementing the standard-offer program, the Public Service Board ("Board") required that at least 51 percent of the feedstock for a farm-methane project must be derived from agricultural operations.¹ The October 28 Order further stated that to qualify as feedstock derived from agricultural operations, a feedstock must be produced for some other purpose than solely that of providing a fuel source for generation.

In a November 24, 2010, Order, in Docket 7572,² the Board granted a request by Agnorth BioPower, LLC that its production of energy crops not be excluded from the 51 percent of eligible feedstock for purposes of its standard-offer contract. The November 24 Order noted that clarifications with regard to the farm-methane category are more appropriately addressed in this docket, and stated that the Board would be conducting a review of this issue in this docket.

1. *Second Order Re Implementation Issues*, Docket 7533, Order of 10/28/09 at 5-7.

2. Docket 7572 concerned a petition by Agnorth BioPower, LLC, for a Certificate of Public Good to construct and operate a farm-methane electric generation facility.

On December 8, 2010, the Board issued a memorandum in this docket seeking comment on the issue of whether energy crops should qualify as eligible feedstock.

On December 21, 2010, comments in response to the December 8 memorandum were filed by the Vermont Agency of Agriculture, Food and Markets ("AAFM"), the Vermont Department of Public Service ("Department"), Central Vermont Public Service Corporation ("CVPS"), Green Mountain Power Corporation ("GMP"), and jointly by Green Mountain Dairy, Neighborhood Energy LLC, Westminster Energy Group, Kane's Cow Power, Gebbie Maplehurst Farm, Blue Spruce Farm, Monument Farms Three Gen, LLC, Chaput Family Farms, and Four Hill Farms (collectively, the "Farm Producers").

Participants' Comments

AAFM contends that the Board should amend its definition of qualifying feedstock to include the growing of energy crops by a farm. AAFM states that growing crops for use as feedstock is an agricultural operation and is consistent with the definition of "farm system" in 30 V.S.A. § 219a, the definition of "farming" in 10 V.S.A. § 6001(22) (Act 250), and the language in Act 45.³ AAFM further claims that the 51 percent requirement is not workable when applied to feedstock produced on a farm given that the intended use of an agricultural product produced on a farm can change with market conditions and weather. The Department filed a letter supporting AAFM's comments.

The Farm Producers maintain that growing energy crops is "farming" as defined by Vermont law, specifically 10 V.S.A. § 6001(22). The Farm Producers contend that restrictions on the use of energy crops by farms participating in the standard-offer program has the potential to jeopardize the economic viability of participating farms.

CVPS and GMP support the inclusion of energy crops as eligible feedstock assuming that the change does not jeopardize their voluntary renewable energy pricing programs.⁴ CVPS and GMP seek clarification that the changes to the farm-methane category would not impact the

3. Public Act No. 45 (2009 Vt., Bien. Sess.).

4. GMP has a Renewable Energy Rider as part of its GreenerGMP portfolio. CVPS implements its Cow Power program under its Voluntary Renewable Service Rider Tariff.

ability of the renewable energy credits produced by standard-offer projects to be compliant with either the Massachusetts standards for Renewable Portfolio Standards Class I generation units or as a Connecticut Renewable Portfolio Standards Class I generator.

Discussion

We are persuaded by the arguments made by the participants and conclude that production of energy crops represents a feedstock derived from agricultural operations. Therefore, we amend our October 28 Order to include energy crops as a feedstock derived from agricultural operations.

In addition, with regard to the concerns raised by CVPS and GMP, Massachusetts and Connecticut are responsible for certifying renewable energy credits in their states, and the Board does not have jurisdiction over those determinations.⁵

SO ORDERED.

5. If CVPS, GMP, or project developers want further clarification on this matter, they should request a determination from the appropriate Massachusetts or Connecticut authority.

Dated at Montpelier, Vermont this 28th day of March, 2011.

<u>s/ James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/ David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/ John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: March 28, 2011

ATTEST: s/ Susan M. Hudson
Clerk of the Board

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.